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DIVISION OF CONSUMER AND TRANSPORTATION PROGRAMS**

**Summary of Comments and Response to Comments  
on the Proposed Amendments to the Regulation and  
State Implementation Plan for Ozone**

**310 CMR 7.36:**

**Transit System Improvements**

**Regulatory Authority: M.G.L. c. 111, Sections 142A through 142M**

**December 2006**

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-2207.

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## **SUMMARY OF AND RESPONSE TO COMMENTS ON 310 CMR 7.36: TRANSIT SYSTEM IMPROVEMENTS**

The Massachusetts Department of Environmental Protection (MassDEP) proposed amendments to 310 CMR 7.36, Transit System Improvements, and, in accordance with the public review process requirements of M.G.L. Chapter 30A, made the proposed amendments available for public review, published notification of the amendments, and held a public hearing on December 21, 2005 to solicit public comment on the proposed regulation. The public comment period ended January 17, 2006 and relevant comments have been summarized and organized into groupings for response. A list of all commenters on the proposed amendments is included in Attachment I.

### **Technical Analysis/Modeling**

**Comment:** MassDEP received a number of comments on the air quality analysis included in the Background Document and Technical Support for the proposed regulations. Several commenters indicated that the analysis was flawed, while other commenters requested additional information and analysis, and public review of any new technical analysis.

**Response:** Subsequent to the release of the Background Document and Technical Support for the proposed regulations and the close of the public comment period, the Executive Office (EOT) of Transportation informed MassDEP in a March 23, 2006 letter that "...we have concluded that some additional modeling may be necessary to ensure that the proposed projects do meet MassDEP's goals of net air quality improvement. This review and re-running of the models is technical in nature, but is meant to ensure that the most up-to-date models are used to analyze all projects."

To address EOT's need to update the modeling, the final regulation now includes subsection (8), *Determination of Air Quality Emission Reductions*. This subsection requires EOT to calculate the emission reductions that will be achieved from completion of the Fairmount Line improvements, 1000 new park and ride parking spaces, and the Green Line extension to Medford Hillside with a spur to Union Square and to demonstrate that these projects will achieve 110% of the emissions reductions that would have been achieved if the Arborway Restoration, the Blue Line/Red Line connection, and the Green Line extension to Ball Square/Tufts University had been built. Prior to January 2, 2007, EOT is required to complete and release for public comment, a report, that details the analysis methodology used to make the demonstration, take public comments on the report, and summarize and respond to all public comments.

### **Project Delays**

**Comment:** Several commenters indicated that interim mitigation for delays beyond any deadlines in regulation should be required and that the proposed regulation is ambiguous as to when mitigation is required. EPA commented that the bulk of emission reductions with the substitute projects would not occur by January 2012, but will be delayed until January 2015, and encouraged MassDEP to consider mitigation measures for the three-year delay period from December 2011 to December 2014. EPA's comments stated that interaction of the revised

deadlines in subsection (2) with delay provision in subsection (3) could further delay projects without compensating emission reductions. EPA suggested that diesel retrofits are a promising opportunity to provide reductions and offset lost emission reductions.

**Response:** The final regulations require the completion of the Fairmount Line improvements and 1000 new park and ride parking spaces by December 31, 2011 and the Green Line extension to Medford Hillside with a spur to Union Square by December 31, 2014. If these projects are delayed beyond these required completion dates, interim emission offset projects must to be implemented until the required project is completed. The regulation specifies that interim emission offset projects shall include new park and ride parking spaces, the retrofit of diesel engines in the transit ridership area of the delayed project, or implementing a project earlier than its required deadline.

MassDEP is not requiring mitigation measures for the three-year delay period from December 2011 to December 2014 because the regulation in effect prior to the revision allowed for a delay up to three years without the need for mitigation measures or a substitute project.

**Comment:** EPA commented that the proposed regulation continues to allow MassDEP to grant compliance deadline extensions without a SIP approval. EPA stated it will need to assess EOT's and MassDEP's track record in implementing and enforcing mitigation measures to address the public concern about the integrity of the SIP provision that authorizes such delays. The 2001 ACO and its two subsequent amendments identified project and mitigation measures. It appears that compliance with these measures has not been consistent.

**Response:** The final regulation allows compliance deadline extensions only if interim offset project will be implemented that are approved by MassDEP. MassDEP has been diligent and aggressive in monitoring and enforcing the provisions of the regulation and the ACO and its amendments.

**Comment:** The criteria in 310 CMR 7.36(3)(a)1-3 of the proposed regulation by which MassDEP will evaluate EOT project delay requests should be rewritten to inform MassDEP and the public what standard MassDEP will use to grant or deny a request.

**Response:** Subsection (4) of the final regulations requires that EOT implement interim emission reduction offset projects that achieve equal or greater emission reductions than the delayed project during the period of delay. The final regulations also specify, in 310 CMR 7.36 (4)(b), the types of projects that must be implemented during the period of delay. These are the criteria that MassDEP will apply in its determination on an EOT project delay petition.

**Comment:** Penalties should be included in regulation for project delays.

**Response:** MassDEP has authority to assess penalties for noncompliance with the regulation under M.G.L. c.21A §16 and 310 CMR 5.00, Administrative Penalties regulations. Inclusion of penalties in the regulation is unnecessary.

## Substitute Projects

**Comment:** Several commenters objected to substitution language in the proposed regulation, including the removal of the “infeasibility” language. Other commenters suggested that the circumstances should be limited in which EOT can abandon projects and that criteria should be developed for project substitutions.

**Response:** EOT, in its August 10, 2005 recommendation to revise the SIP, indicated that the “infeasibility” language in the regulations “creates an unrealistic standard” and that a project would have to be “not physically possible” to meet the standard. In response, the proposed regulations did not include this language.

To address the comments received on the proposed regulation to include criteria for project substitutions, subsection (5), Substitute Transit System Improvement Projects, has been modified. Substitute projects may only proceed after certain interim project deadlines have been completed, a project substitution determination has been completed by EOT, a public meeting and public comment period have been completed, and MassDEP determines that EOT has met the requirements in the regulation for project substitution.

**Comment:** Several commenters indicated that the language requiring substitute projects to serve the same area so that air quality benefits are provided to original communities be retained.

**Response:** The final regulation requires that substitute projects proposed for the Fairmount Line project be within the Dorchester, Hyde Park, Mattapan, and Roxbury neighborhoods of the City of Boston and that substitute projects proposed for the Green Line Extension and the Green Line Union Square spur of the Green Line Extension to Medford Hillside be within the municipalities of Boston, Cambridge, Somerville and Medford, i.e., the urban core area.

**Comment:** Several commenters suggested that a public process with MassDEP oversight for project substitution be included in the regulation.

**Response:** The final regulation requires EOT to conduct a public meeting and take public comment on proposed project substitutions. Substitution determinations must also be submitted to MassDEP for a determination that the regulatory requirements for project substitution have been met.

## Project Interim Deadlines

**Comment:** To allow for project monitoring, interim deadlines for all projects should be required; EOT has repeatedly fallen behind schedule and MassDEP has not taken action until projects are overdue.

**Response:** The final regulation requires the completion of interim project deadlines for the Fairmount Line improvements, 1000 new park and ride parking spaces, and the Green Line extension to Medford Hillside with a spur to Union Square projects. See subsection 310 CMR 7.36 (3), Project Interim Deadlines.

## **Project Funding**

**Comment:** Several commenters requested a demonstration that adequate funding is dedicated to the remaining projects and that a process be developed for a funding strategy.

**Response:** Subsection (7), Public Process Requirements, requires that EOT develop an annual status and update report on projects required by 310 CMR 7.36 (2) (f) through (j), including information on project funding. In addition, in accordance with the (CLF) (CLF v. Romney et al, United State District Court for the District of Massachusetts, Civil Action #05-10487) ...outstanding projects in 310 CMR 7.36 shall be included in the next Capital Plan published by the Commonwealth and that subsequent Capital Plans shall address the Commonwealth's plans for financing the projects contemplated in accordance with Milestones established for achieving all relevant deliverables."

## **Project Specific Comments**

### ***Green Line Arborway Restoration***

**Comment:** Numerous commenters requested that the requirement for the Green Line Arborway Restoration be retained.

**Response:** Citing lack of support by the Boston Metropolitan Planning Organization, concerns related to right-of-way limitations in the corridor, and poor access for public safety vehicles, EOT, in its August 10, 2005 recommendation to revise the SIP, requested removal of the Arborway Restoration as a commitment under 310 CMR 7.36. Based on Governor Weld's July 9, 1993 designation of EOT as the lead agency in SIP planning for transportation initiatives under section 173A of the Clean Air Act, MassDEP defers to EOT on this matter and is not requiring the completion of this project.

**Comment:** Several commenters were not in favor of the Green Line Arborway Restoration, but indicated that an alternative project should be implemented in the corridor including, but not limited to, improving the existing Route #39 bus service, implementing transit priority signals, deploying cleaner buses, and a GPS system.

**Response:** While the final regulations do not include a requirement for a project in the Arborway corridor, the Settlement Agreement with the Conservation Law Foundation, "The Parties agree that they will work in good faith with the City of Boston and other relevant parties to develop and agree upon recommended public transportation improvements to the Arborway corridor over the course of the next year. All Parties agree to commit to and participate in a public process to identify and recommend any agreed upon improvements for the Arborway Corridor."

### ***Red Line/Blue Line Connector***

**Comment:** Several commenters requested that the requirement for the Red Line /Blue Line Connector be retained and that design should be initiated.

**Response:** While the final regulation does not require the construction of the Red Line /Blue Line Connector, the final regulation requires EOT to complete final design of the project by December 31, 2011.

***Green Line Extension to Somerville, West Medford, Union Square***

**Comment:** Several commenters indicated that delaying the project until 2014 is unjustified and that mitigation should be required for this delay. EPA and other commenters questioned if it realistic to expect that the project will be completed by 2014 given planning, environmental evaluation, permitting, project design, capital acquisition, and construction requirements.

**Response:** MassDEP is not requiring mitigation measures for the three-year delay for this project from December 2011 to December 2014 because the regulation in effect prior to the revision allowed for a delay up to three years without the need for mitigation measures. MassDEP believes that the requirements for interim project deadlines and the annual public process will keep this project moving forward. However, if the project is delayed beyond 2014, interim emission offset projects will be required.

**Comment:** More public participation is needed from the impacted communities and the disabled community on the project.

**Response:** The final regulations require EOT to complete interim deadlines for this project, including the completion of the environmental review process under the Massachusetts Environmental Policy Act (MEPA), which will allow for meaningful public participation as the project moves forward.

**Comment:** A study was not performed on the amount of traffic generated in West Medford and surrounding communities or the environmental impact on West Medford.

**Response:** Traffic and environmental impacts on the community will be addressed through the MEPA process.

**Comment:** One commenter asked if the state will pay for the costs to redirect traffic flow and for street enhancements and maintenance in accordance with Executive Order 145 and Proposition 2 ½.

**Response:** MassDEP believes that this issue would be more appropriately addressed by EOT in the design process for the project.

***Fairmount Line***

**Comment:** Several commenters requested that a 5<sup>th</sup> station be added to the project in the final regulations.

**Response:** The final regulations do not require a 5<sup>th</sup> station.

**Comment:** The regulations should define the service that will be provided - “improve service and increase ridership” is too vague.

**Response:** The service that will be provided will be determined during the design process for this project. MassDEP believes that defining the service in the regulations before the design process is completed is inappropriate.

**Comment:** Clean diesel locomotive technologies should be required.

**Response:** MassDEP is preempted under the federal Clean Air Act from requiring cleaner locomotive technology in state regulations.

### ***1000 Parking Spaces***

**Comment:** Several commenters indicated that the regulation should be more specific on the location of the 1000 spaces. EPA commented that the spaces need to be carefully targeted to achieve projected emission reductions.

**Response:** As EOT completes the interim project deadlines for this project, the locations for the 1000 spaces will be determined and subject to public review and comment under the public process requirements of the regulation. MassDEP encourages EOT to locate the spaces to ensure that the projected emissions reductions of these spaces are achieved.